

KENNETH W. MACEK

IBLA 80-501

Decided July 30, 1980

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas lease W 57393 Acq.

Affirmed.

1. Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

2. Oil and Gas Leases: Reinstatement

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment the day it was due does not constitute reasonable diligence.

## 3. Evidence: Generally – Oil and Gas Leases: Reinstatement

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

APPEARANCES: Kenneth W. Macek, pro se.

## OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Kenneth W. Macek has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease W 57393 Acq., which terminated by operation of law when payment of the annual rental was not received on or before February 1, 1980, the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). 1/ The payment was not received by BLM until February 4, 1980, arriving in an envelope bearing a February 1, 1980, postmark.

[1] An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not received by the BLM state office on or before the anniversary date. 30 U.S.C. § 188(b) (1976). Appellant asserts that payment should be deemed timely because payment was tendered to the U.S. Postal Service before the anniversary date which made late delivery beyond his control. Appellant also asserts that BLM, in its refusal to accept his payment acted in a manner inconsistent with the Commercial Code and finally that BLM deprived him of his lease without reasonable notice. However, contrary to appellant's assertions, the applicable regulations, which govern here make clear that "[f]iling is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing." 43 CFR 1821.2-2(f). Additionally, the regulations make it clear that payment must actually be received in the state office on or before the anniversary date. 43 CFR 3108.2-1(a).

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1/ Statutory provisions for termination and reinstatement of public land oil and gas leases also apply to oil and gas leases for acquired lands. See 30 U.S.C. § 354 (1976).

[2] A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). Late payment is justifiable if it is attributable to causes beyond the lessee's control. See Annie Mae Buckley, 44 IBLA 99 (1979) and Daniel Ashley Jenks, 36 IBLA 268 (1978). Reasonable diligence generally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2). Mailing the rental in Littleton, Colorado, on the same day it was due in Cheyenne, Wyoming, does not constitute reasonable diligence. Harry Zaslow, 46 IBLA 217 (1980); Bob W. Scott, 46 IBLA 254 (1980).

[3] There is no clear assertion by appellant as to when the payment was deposited in the mails. In his petition for reinstatement, he stated that his check dated December 20, 1979, was mailed and there appeared to be some delay "in the mailing or processing." In his statement of reasons on appeal he asserts: "As I have done in the past years, I prepared and mailed my check and it was post marked on the 1st of February 1980." Later in his statement of reasons, appellant contends: "Payment was tendered U.S. Mails before the first and late delivery was beyond my control." As we have indicated, mailing a payment does not constitute filing with this Department. The postmark date of a rental payment is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support a lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark. Annie Mae Buckley, *supra*. One type of satisfactory evidence would include a statement by a postal official explaining the possibility of a delay in processing mail from a particular location on the day it is asserted mail was deposited in a postal receptacle at that location. Thus, in order to show that the payment was mailed before February 1, appellant would have had to offer some persuasive explanation of why the letter was not also postmarked before February 1, as would normally be expected. See, e.g., Edward Malz, 33 IBLA 22 (1977).

Appellant also asserts that the post office branch was being remodeled and the box section being expanded, which may account for some of the delay in the postmarking. If appellant had made a satisfactory showing as to when the payment was placed in the mails, corroborative statements from postal authorities that the circumstances may have delayed the posting, might be persuasive. However, there is no showing at all as to when the payment was placed in the mails, nor any clear explanation of the difference between the date of the check and the postmark. Thus, we see no basis for overturning BLM's decision. In the absence of satisfactory corroborating evidence to the contrary, BLM was correct in regarding the postmark date as the mailing date. Annie Mae Buckley, *supra*; Daniel Ashley Jenks, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur.

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Douglas E. Henriques  
Administrative Judge

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Frederick Fishman  
Administrative Judge

